IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 27TH NOVEMBER 2007 / 6TH AGRAHAYANA 1929

Crl.Rev.Pet.No. 2704 of 2005()

CRA.765/2004 of SESSIONS COURT, KOTTAYAM
CC.491/2002 of JUDL. MAGISTRATE OF FIRST CLASS-II(MOBILE), KOTTAYAM

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REVN. PETITIONER: APPELLANT/ACCUSED.

JAIMON THOMAS, AGED 31 YEARS,
S/O.OUSEPH THOMAS, CHAKKULICKAL HOUSE,
MARANGATTUPALLY, PALA, KOTTAYAM.

BY ADV. SRI.TOM JOSE

RESPONDENTS: COMPLAINANT AND STATE.

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1. SHAJAHAN P.S. PROPRIETOR,
JANATHA PUBLISHERS, CHANGANACHERRY.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.G.SUKUMARA MENON
PUBLIC PROSECUTOR SRI. C.M. NAZAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 27/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.RAMKUMAR, J.

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Crl.R.P. No. 2704 of 2005

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Dated: 27-11-2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No. 491 of 2002 on the file of the J.F.C.M.-II (Mobile) Kottayam challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts

below. The conviction was thus rightly entered against the petitioner.

4. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. Having regard to the facts and circumstances of the case, I am, however, inclined to modify the sentence in the light of the recent pronouncement by the Supreme Court that no default sentence can be imposed for an order for compensation under Section 357(3) Cr.P.C. Accordingly, the sentence imposed on the revision petitioner is set aside and instead he is sentenced to undergo imprisonment till rising of court and to pay a fine of **Rs. 5,000/- (Rupees five thousand only)** (giving credit to a sum of Rs. 5,000/- already deposited before the trial court and which amount shall be permitted to be withdrawn by the first respondent/complainant) which shall be deposited before the trial court within **one month** from today failing which he shall suffer simple imprisonment for **two** months. The fine amount as and deposited shall be paid to the first respondent complainant as compensation under Sec. 357 (1) Cr.P.C.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

V. RAMKUMAR, JUDGE.

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